

STATE OF MICHIGAN
COURT OF APPEALS

STANLEY S. KLOET,

Plaintiff-Appellee,

v

JANET I. KLOET,

Defendant-Appellant.

UNPUBLISHED

May 21, 1999

No. 208085

Newaygo Circuit Court

LC No. 96-016397 DO

Before: Hoekstra, P.J., and Saad and R.B. Burns,* JJ.

PER CURIAM.

In her appeal as of right from a judgment of divorce, defendant Janet I. Kloet contends that the distribution of the marital estate was inequitable and premised on the wrong date for valuing the marital assets. We affirm.

This Court reviews a trial court's findings of fact in a divorce case for clear error. *Sparks v Sparks*, 440 Mich 141, 151; 485 NW2d 893 (1992). "A finding is clearly erroneous when, although there is evidence to support the finding, this Court is left with a definite and firm conviction that a mistake has been made." *Berry v State Farm Mutual Automobile Ins Co*, 219 Mich App 340, 345; 556 NW2d 207 (1996); see also *Beason v Beason*, 435 Mich 791, 805; 460 NW2d 207 (1990). If there is no clear error in the findings of fact the Court must then determine if the property division was "fair and equitable in light of those facts." *Draggoo v Draggoo*, 223 Mich App 415, 429-430; 566 NW2d 649 (1997). However, "[t]he dispositional ruling is discretionary and should be affirmed unless this Court is left with the firm conviction that the division was inequitable. *Id.* at 430.

The facts of this case went uncontested below and the trial court had a limited role in determining the distribution of the marital assets. Defendant does not challenge the trial court's findings of fact. Therefore, we conclude that the trial court did not err in its findings of fact and we proceed to evaluate the equity of the asset distribution in light of those facts. *Sparks, supra* at 151; *Draggoo, supra* at 429-430.

* Former Court of Appeals judge, sitting on the Court of Appeals by assignment.

The trial court's purpose in dividing property between the parties in a divorce action is to arrive at "a fair and equitable division in light of all the circumstances." *Gregg v Gregg*, 133 Mich App 23, 26; 348 NW2d 295 (1984). While crafting the distribution, the court need not employ mathematical equations or divide the property perfectly in half. *Id.* In *Sparks, supra* at 159-160, our Supreme Court articulated a non-exhaustive list of factors that are relevant to the distribution of property in a divorce action:

(1) duration of the marriage, (2) contributions of the parties to the marital estate, (3) age of the parties, (4) health of the parties, (5) life status of the parties, (6) necessities and circumstances of the parties, (7) earning abilities of the parties, (8) past relations and conduct of the parties, and (9) general principles of equity. [*Id.*]

The trial court commented on every one of these factors except factor eight which does not seem relevant to this case.

Defendant argues that the property division was improper because it was not equal. She claims that her contributions to the marriage in the form of labor and money met or exceeded plaintiff's contributions. However, as we have said, "Although the division of the property may not have been exactly equal, equity rather than equality is the test." *Nalevayko v Nalevayko*, 198 Mich App 163, 164; 497 NW2d 533 (1993).

Furthermore, a spouse's contribution to the marriage is only one of the many factors that must be weighed against the other unique or important circumstances of the case. *Sparks, supra* at 158-159. Indeed, the trial court considered other highly relevant factors in this case. In particular, the trial court noted that defendant received a "sizable inheritance" from her mother and has therefore a relatively secure financial future. The trial court's decision regarding the distribution appropriately reflected plaintiff's fixed retirement income in contrast to the relative financial security defendant has from her inheritance. The property division also implicitly reflected a determination that, if either party's financial resources become inadequate, plaintiff probably will have a more difficult time finding suitable work due to his age in comparison to defendant, who is not only younger but was also working part-time at the time of trial. Given these circumstances, we conclude that the trial court acted fairly and equitably by awarding plaintiff the major portion of the marital assets.

Furthermore, even though the distribution economically favored plaintiff, we note that the trial court took a reasoned approach concerning the weight to give defendant's more advantageous financial position in the property division. For instance, the trial court decided to compensate plaintiff for the \$35,000 in proceeds from his premarital assets that he invested in enlarging the house the parties physically shared while defendant, her mother, and her brother jointly owned it. Nevertheless, the court refrained from awarding plaintiff the appreciated value of the investment as he had requested. This reflected a compromise between the parties' demands. We must respect the trial court's exercise of its discretion in this case because we are not "left with the firm conviction that the division was inequitable." *Draggoo, supra* at 430.

Defendant also argues that the trial court erred by failing to set a date for the purpose of assessing the value of the marital assets. However, because defendant did not raise this issue in the trial court, he failed to preserve it for our review, *Peterman v Dep't of Natural Resources*, 446 Mich 177, 183; 521 NW2d 499 (1994), and we therefore decline to consider it.

Affirmed.

/s/ Joel P. Hoekstra

/s/ Henry William Saad

/s/ Robert B. Burns